

Courtland L. Reichman  
(California Bar No. 268873)  
Jennifer P. Estremera  
(California Bar No. 251076)  
MCKOOL SMITH PC  
255 Shoreline Drive, Suite 510  
Redwood Shores, California 94065  
Telephone: (650) 394-1400  
Facsimile: (650) 394-1422  
creichman@mckoolsmith.com  
jestremera@mckoolsmith.com

John B. Campbell (Admitted *Pro Hac Vice*)  
Kathy H. Li (Admitted *Pro Hac Vice*)  
MCKOOL SMITH PC  
300 W. 6th Street, Suite 1700  
Austin, Texas 78701  
Telephone: (512) 692-8700  
Facsimile: (512) 692-8744  
jcampbell@mckoolsmith.com  
kli@mckoolsmith.com

*Attorneys for Plaintiff*  
Immersion Corporation

Adam R. Alper (SBN 196834)  
adam.alper@kirkland.com  
555 California Street  
KIRKLAND & ELLIS LLP  
San Francisco, California 94104  
Telephone: (415) 439-1400  
Facsimile: (415) 439-1500

Michael W. De Vries (SBN 211001)  
michael.devries@kirkland.com  
KIRKLAND & ELLIS LLP  
333 South Hope Street  
Los Angeles, California 90071  
Telephone: (213) 680-8400  
Facsimile: (213) 680-8500

Lien Dang (SBN 254221)  
lien.dang@kirkland.com  
KIRKLAND & ELLIS LLP  
3330 Hillview Avenue  
Palo Alto, California 94304  
Telephone: (650) 859-7000  
Facsimile: (650) 859-7500  
*Attorneys for Defendant*  
Fitbit, Inc.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

IMMERSION CORPORATION,  
  
Plaintiff,  
  
v.  
  
FITBIT, INC.,  
  
Defendant.

CASE NO. 5:17-cv-03886-LHK

**JOINT CLAIM CONSTRUCTION AND  
PREHEARING STATEMENT  
PURSUANT TO PATENT LOCAL  
RULE 4-3**

Judge: Honorable Lucy Koh  
Complaint filed: July 10, 2017

Pursuant to Patent Local Rule 4-3 and the Case Management Order (Dkt. No. 35) and the Court's orders regarding the parties' stipulations to extend time (Dkt. Nos. 51 and 57), Plaintiff Immersion Corporation ("Immersion" or "Plaintiff") and Defendant Fitbit, Inc. ("Fitbit" or "Defendant") (collectively, "the Parties") hereby submit this Joint Claim Construction and Prehearing Statement.<sup>1</sup>

#### A. AGREED UPON CONSTRUCTIONS

The Parties have met and conferred and agree that the following terms shall be accorded their plain and ordinary meaning.

Patent	Claim Term	Agreed Upon Construction
U.S. Patent 8,059,105	"user-independent event" (Claim 19)	Plain and ordinary meaning
U.S. Patent 8,638,301	"first data signal" (Claim 27)	Plain and ordinary meaning
U.S. Patent 8,638,301	"second data signal" (Claim 31)	Plain and ordinary meaning

#### B. PROPOSED CONSTRUCTIONS OF DISPUTED TERMS

The Parties have met and conferred to narrow the remaining disputes to seven terms. The parties have been unable to agree on the proposed evidence from the Parties, as it is Fitbit's position that Immersion belatedly changed its constructions and its evidence in violation of Patent Local Rule 4-2(b).<sup>2</sup> Immersion strongly disagrees with Fitbit's characterizations of its efforts during the meet

<sup>1</sup> Fitbit's position is that the Parties' claim construction disputes, either those described here and in Immersion's notice (Dkt. No. 56) or more generally in the Parties' claim-construction exchanges, do not affect the Court's § 101 analysis.

<sup>2</sup> Fitbit objects to Immersion's late-disclosed claim constructions and intrinsic and extrinsic evidence. On January 8, the Parties exchanged claim terms. On January 18, the Parties exchanged claim constructions and intrinsic and extrinsic evidence pursuant to Patent Local Rule 4.2. On January 25, Immersion served a corrected exchange, removing a claim term it had proposed for construction on January 18 but had not timely identified on January 8. On February 22, the day before the deadline for the joint claim construction statement, Immersion proposed

and confer process.<sup>3</sup> A chart displaying Immersion's proposed constructions for each disputed claim term along with the supporting intrinsic and extrinsic evidence is attached as Exhibit A. A chart displaying Fitbit's proposed constructions for each disputed claim term along with the supporting intrinsic and extrinsic evidence is attached as Exhibit B.

### C. IDENTIFICATION OF SIGNIFICANT CLAIM TERMS

The Parties agree that the following two claim terms for the court's construction are significant:

	Patent	Claim Term
1	U.S. Patent 8,059,105	"one or more processors configured to receive an input signal and generate a force signal based on the input signal, wherein the input signal is associated with a user-independent event" (Claim 19)
2	U.S. Patent 8,351,299	"a processing device that receives the sensor output and accumulates counts associated with the sensor output, the processing device providing an output to the vibrotactile device once a threshold associated with the accumulated

new constructions and/or positions for each and every claim term. On February 23, the deadline for the joint claim construction statement, at 7:31 PM Pacific Time, Immersion served edits to its claim construction positions and evidence, identifying new intrinsic and extrinsic evidence not previously cited in its exchanges. For the purpose of the joint submission, Fitbit includes in its chart Immersion's proposed constructions from February 22, 2018, but rejects Immersion's proposed changes to evidence in violation of PLR 4.2(b). Fitbit reserves its rights to object to and/or move to strike Immersion's untimely-disclosed constructions and evidence. Immersion argues that Fitbit also changed its constructions, but Fitbit's changes were exclusively ones that adopted proposals from Immersion or dropped terms, rather than changes that introduced wholly new proposed constructions and/or evidence past the deadline for the exchange.

<sup>3</sup> On January 18, the Parties exchanged claim constructions and intrinsic and extrinsic evidence pursuant to Patent Local Rule 4.2. On January 24, Fitbit informed Immersion that the draft Immersion had served included a claim term not previously identified by Immersion. On January 25, Immersion informed Fitbit that its inclusion of that claim term was inadvertent, and Immersion immediately served a corrected exchange removing the claim term it had inadvertently included. On February 22, during the Parties' meet and confer, Immersion proposed revised claim constructions in an effort to compromise. On February 23, during the Parties' exchange of drafts of the joint claim construction statement, Immersion served edits to its claim construction positions and evidence which reflected Immersion's compromises made on February 22. Fitbit complains of Immersion's revisions during the Parties' meet and confer process, but fails to point out that Fitbit made changes to its own constructions and dropped two claim terms at this late hour. Further, following Immersion's February 22 revisions, the Parties were able to reach agreement on certain claim constructions.

	Patent	Claim Term
		counts is reached.” (Claim 14)

Immersion identifies the following additional claim term as significant:

	Patent	Claim Term
1	U.S. Patent 8,059,105	“haptic feedback device” (Claim 19)

Fitbit identifies the following additional claim terms as significant:

	Patent	Claim Term
1	U.S. Patent 8,059,105	“generate a force signal based on the input signal” (Claim 19)
2	U.S. Patent 8,351,299	“periodic” (Claim 14)
3	U.S. Patent 8,638,301	“detect an interaction with the first mobile device” (Claim 27)
4	U.S. Patent 8,638,301	“determine a change in a display signal” (Claim 27)

**D. ANTICIPATED LENGTH OF TIME NECESSARY FOR HEARING**

The Parties respectfully request three hours for the claim construction hearing, with each party allotted ninety minutes.

**E. WITNESSES TO APPEAR AT THE CLAIM CONSTRUCTION HEARING**

Plaintiff Immersion may present testimony of Dr. Sigurd Meldal with respect to how a person of ordinary skill in the art would understand the disclosures in the asserted patent. Plaintiff Immersion anticipates presenting such testimony via declaration, but will be prepared to provide live testimony at the hearing.

1 Defendant Fitbit does not believe that any live testimony is necessary for the claim  
2 construction hearing. However, if Immersion presents expert testimony, while Fitbit reserves its  
3 rights to object to that testimony, Fitbit reserves its right to present rebuttal expert testimony.

4 **F. IDENTIFICATION OF FACTUAL FINDINGS REQUESTED FROM COURT**

5 Immersion requests that the Court make the factual finding that a person of ordinary skill in  
6 the art would understand the terms governed by 112(6) to have the corresponding structure identified  
7 by Immersion. Further, Immersion requests that the Court make the factual finding that a person of  
8 ordinary skill in the art would understand that the term “haptic feedback device” is construed as  
9 proposed by Immersion. Further, Immersion requests that the court making the factual finding that  
10 the remaining terms have a plain and ordinary meaning as understood by one of ordinary skill in the  
11 art.

12 At this time, Fitbit does not seek any factual findings in relation to the claim construction  
13 hearing.

14 DATED: February 23, 2018

Respectfully submitted,

KIRKLAND & ELLIS LLP

/s/ Adam R. Alper

Adam R. Alper (SBN 196834)  
KIRKLAND & ELLIS LLP  
555 California Street  
San Francisco, California 94104  
Telephone: (415) 439-1400  
Facsimile: (415) 439-1500  
adam.alper@kirkland.com

Michael W. De Vries (SBN 211001)  
KIRKLAND & ELLIS LLP  
333 South Hope Street  
Los Angeles, California 90071  
Telephone: (213) 680-8400  
Facsimile: (213) 680-8500  
michael.devries@kirkland.com

Lien K. Dang (SBN 254221)  
KIRKLAND & ELLIS LLP  
3330 Hillview Avenue  
Palo Alto, CA 94304  
Telephone: (650) 859-7000  
Facsimile: (650) 859-7500  
lien.dang@kirkland.com

*Attorneys for Defendant Fitbit, Inc.*

DATED: February 23, 2018

Respectfully submitted,

MCKOOL SMITH, P.C.

/s/ Courtland Reichman  
Courtland Reichman (SBN 268873)  
Jennifer P. Estremera (SBN 251076)  
MCKOOL SMITH PC  
255 Shoreline Drive, Suite 510  
Redwood Shores, California 94065  
Telephone: (650) 394-1400  
Facsimile: (650) 394-1422  
creichman@mckoolsmith.com  
jestremera@mckoolsmith.com  
bsokhansanj@mckoolsmith.com

John Campbell (Pro Hac Vice)  
Kathy H. Li (Pro Hac Vice)  
MCKOOL SMITH PC  
300 W. 6th Street, Suite 1700  
Austin, Texas 78701  
Telephone: (512) 692-8700  
Facsimile: (512) 692-8744  
jcampbell@mckoolsmith.com  
kli@mckoolsmith.com

*Attorneys for Plaintiff Immersion Corporation*

**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that concurrence in the filing of this document has been obtained from the other signatories.

DATED: February 23, 2018

/s/ Courtland Reichman

Courtland Reichman